

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

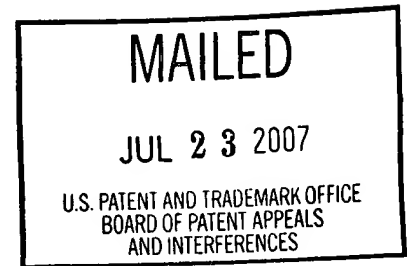
---

Ex parte HARRY DWYER and  
JOHN SUSANTHA FERNANDO

---

Application 09/975,764

---



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

---

This application was electronically received at the Board of Patent Appeals and Interferences on July 9, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below.

There is no proper indication on the record that an Appeal conference was held for the Examiner's Answer mailed December 4, 2006. In accordance with MPEP § 1208 regarding appeal conferences:

On the examiner's answer, below the primary examiner's signature, the word "Conferees" should be included, followed by the typed or printed names of the other two appeal conference participants. These two appeal conference

Application 09/975,764

participants must place their initials next to their name. This will make the record clear that an appeal conference has been held.

Appropriate correction is required.

The Appeal Brief filed January 24, 2006, is defective because the Summary of Claimed Subject Matter does not map the claimed invention to the independent claims as set forth in 37 CFR § 41.37 (c)(1)(v) which states:

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

There is no delineation as to where separately independent claims, 1, 15, 23, 29, and 33 are mapped to the specification, by page and line number.

Correction is required. MPEP § 1205.03 states:

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

Application 09/975,764

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- 1) have the Examiner's Answer rescanned with the appropriate signatures;
- 2) hold the Appeal Brief filed on January 24, 2006, defective;
- 3) notify appellants to file a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v);
- 4) consider the paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), and;
- 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By:



---

PATRICK J. NOLAN  
Deputy Chief Appeals Administrator  
(571) 272-9797

PJN/eld  
RYAN, MASON & LEWIS, LLP  
1300 POST ROAD  
SUITE 205  
FAIRFIELD CT 06824